



SUPREME COURT ISSUES DECISION ON FMLA CASE

BY LAURIE BENALLO
STATE FMLA COORDINATOR

The United States Supreme Court has issued a ruling on its second case involving the FMLA. The case involved is *Hibbs v. Nevada Department of Human Resources*. Although the ruling is different than those in other recent employment law cases, it has little practical effect for the state personnel system. In this case, Hibbs requested and took intermittent leave to care for his wife. His employment was terminated when he failed to return to work after FMLA leave. Hibbs claimed that his FMLA leave should not have begun until after he exhausted "catastrophic leave" provided by the employer.

The district court found that Hibbs' suit was barred by Nevada's sovereign immunity from prosecution under the 11th amendment to the U.S. Constitution. The 9th Circuit Court of Appeals reversed the district court's decision finding that because the case involved leave to care for a sick family member, it could be defended as an attempt to remedy gender discrimination, one of the primary purposes behind the FMLA. If a state acts in a manner that violates the principles of the Constitution, the federal government has the right to intervene to enforce the will of the people, even if doing so nullifies a state's sovereignty.

In passing the FMLA, Congress was acting to stop discrimination against both women and men. Women suffered discrimination in hiring and promotion because of assumptions they would be responsible for most of the care for children or sick family. Men suffered discrimination because they were presumed to not need time off to perform the same care. The Supreme Court's ruling found that Congress was within its authority to override a state's sovereign immunity by granting state employees the right to sue in federal court. Because the case involved the care of a spouse, questions still remain about whether employees can sue regarding their own serious health condition.

So what does this all mean to the state personnel system? Unlike the highest court's ruling in other

employment law cases, a state can be sued by its employees in state or federal court for alleged violations of FMLA. This does not really have a great deal of impact on the state as an employer. We have always been bound by federal employment laws and our technical advice and practice has been to comply with these laws. Our processes, rules and procedures, and forms were developed with both the federal law and U.S. Department of Labor's (US DOL) regulations in mind. US DOL has the authority to investigate our compliance efforts, including the authority to initiate litigation on behalf of employees. Because of potential litigation, it is important that HR professionals continue to ensure supervisors and managers understand their obligations and liabilities. Remember that supervisors and managers also bear personal liability under this single-employer law. To minimize legal risk, the training of supervisors and managers remains critical to your compliance efforts.

If you have any questions, contact Laurie Benallo at 303-866-4247 or laurie.benallo@state.co.us.

INSIDE *THE ADVISOR*

News Briefs.....	Page 2
FMLA Corner.....	Page 2
2003 Legislative Wrap Up.....	Page 3
Risky News.....	Page 4
TCAC Vacany.....	Page 4
Pet Loss & Grieving.....	Page 5
457 Committee Vacancy.....	Page 5

BULLETIN NEWS BRIEFS

- The State Personnel Director adopted procedures that are effective on May 30. The procedures include SES, payment of compensatory time, pay deductions from FLSA-exempt employees on leave, reappointments, victim protection leave, and almost all of Chapter 11 dealing with benefits.
- Final system changes for JEL 03-03 will be implemented on July 1, 2003. The changes include placement of SES positions into the Management class, abolishment of the SES occupational group, abolishment of vacant classes, and a pay grade change for the Transportation Maintenance III class. None of these changes will cause fiscal impact to the agencies involved.
- The Court of Appeals issued a final decision on the Department's motion for reconsideration in the injury leave case. In light of the decision, we have decided to move forward with the restoration of injury leave for those individuals with work-related illnesses or injuries that occurred between April 1, 2000 and July 31, 2002. For more information see the May 14 *Advisor Special Bulletin*.

To learn more about these and other human resources, risk management, benefits, and C-SEAP policies and issues, go to www.state.co.us/dhr and be sure to check the "News Archive" section under Quick Links.

FAMILY/MEDICAL LEAVE CORNER

BY LAURIE BENALLO
STATE FMLA COORDINATOR

Please share this information with FMLA Coordinators, payroll/benefits staff, risk staff, and any others who work with the FMLA.

Q & A

Q. As a supervisor, do I have the right to access my employees' confidential medical files?

A. The US DOL FMLA regulations require employers to maintain as confidential all documents containing medical information, such as leave request forms, certifications, recertifications, or medical histories of employees or employees' family members. It adopts the requirements and standards under the ADA. Under the regulations, supervisors or managers do not necessarily have unrestricted access to employee medical files. Employers may disclose medical information to supervisors or managers only to the extent necessary to plan for absences, and implement any work restrictions and accommodations. Consequently, supervisors and managers have the right to information about when an employee will be absent, what type of intermittent work schedule has been authorized by the medical provider, when the employee is expected to return, what work restrictions are in place, and so on. In practice, supervisors or managers may receive more information because they are typically approving leave which

requires designation of each leave request and notification when FMLA is involved. If your department has centralized FMLA administration (medical certificates are returned to the FMLA coordinator) or the employee chooses to provide documentation through the FMLA coordinator (or designated back-up) individual supervisors should not expect to be informed of details about medical conditions unless the employee chooses to disclose that information directly.

If you have any questions, contact Laurie Benallo at 303-866-4247 or laurie.benallo@state.co.us.

2003 LEGISLATIVE WRAP UP

The following summarizes the key 2003 legislative changes affecting human resources, risk, and benefits.

HB 03-1316 (Total Compensation)

- Total compensation definition now includes other elements, i.e., performance awards, incentives, and leave.
- Compensation survey and recommendations
 - o Survey and report includes the three elements that typically involve increased costs, i.e., salary, benefits, performance awards.
 - o In addition to reviewing 3rd party surveys, Director can also review direct surveys.
 - o Single funding process.
 - o Using survey findings, the Director makes a recommendation for three elements considering fiscal constraints, recruitment/retention, adjustments to compensation, costs, and on explanation for deviation from survey findings. Director is at the table now.
 - o Audits will move to a 4-year cycle in 2005 (vs. 2-year).
- Performance-based Pay
 - o Consolidated two annual reports due January 1.
 - o Removed old language and added no forced distribution (already in rule) and authorization for group awards.
 - o Supervisory sanctions for failure to evaluate do not apply to those outside of Colorado state government, i.e., federal employees.
- Total Compensation Advisory Council
 - o Appointment of employees replaces election.
 - o 10 members:
 - Insurance Commissioner (or delegate)
 - Private sector compensation specialist (by Director)
 - Senator (by President of the Senate)
 - Representative (by Speaker of the House)
 - Employees:
 - 1 by President of Senate
 - 1 by Minority Leader of Senate
 - 2 by Speaker of House
 - 2 by Director - only 1 is required to be an employee
- Separation Incentive Program is now under the Director and no longer requires Governor's declaration but can be declared by department head. No longer a need for two programs.
- Short Term Disability's statutory limitations no longer apply to 60% of salary, waiting period of 30 days, and exhaustion of sick leave specifically, so

there is more flexibility to make changes as needed to be competitive.

- Group benefit plan contributions from the state are no longer specified in statute. Will be part of the compensation survey recommendations and funding process.
- Also contained the language of SB 03-273 directing that salary adjustments not be implemented in FY 03-04.

SB 03-197 (June Pay Date Change)

Shifted the June pay date of each year to the first working day of July, beginning with June 2003.

SB 03-258 (Long Bill)

- Mandates no funding for performance awards for FY 03-04.
- Provides a 4.7% increase in employer contribution for health insurance plans.

SB 03-273 (2003 Salary Survey)

- Mandates that no salary survey adjustments be implemented for FY 03-04.
- Further mandates that this year (03-04) not be made up in subsequent years.

SB 03-277 (PERA, Furloughs & HAS)

Allows employees who had a furlough in a 12-month period used for HAS during July 1, 2003 through June 30, 2004 to be credited with the salary lost if the employee contribution is paid at least three months before the retirement date. The department must then pay the employer's contribution. (Please see the PERA website www.copera.org for more information.)

For more information about the 2003 legislative session, check the DPA website at www.colorado.gov/dpa.

RISKY NEWS

WHERE WORKPLACE LITIGATION, INSURANCE, SAFETY AND LOSS CONTROL ARE IMPORTANT PERSONNEL MATTERS

BY TOM BELL
SAFETY & LOSS CONTROL SPECIALIST

AEDS MAY SAVE A LIFE

Several state agencies are considering or have already purchased Automatic External Defibrillators (AEDs) as part of their safety programs.

Why do state agencies need AEDs? Because AEDs can save lives. Without an AED available, survivability rate of cardiac arrest is only 5%. With an AED available, the survivability rate jumps to 70%.

An AED can be used by ordinary people to shock a person who is having a heart attack and is in cardiac arrest. You have probably seen defibrillators on television hospital dramas, but AEDs are easier to use and do not require specialized medical training.

The AED is designed to be used by anybody who can follow the simple step-by-step directions that it gives you. It tells you how to place the electrodes, and it checks the patient to see if it needs to deliver a shock to restore normal heart rhythm.

However, it is recommended in areas where an AED is installed that employees be offered training in AED and CPR (Cardio-Pulmonary Resuscitation).

Currently, AEDs are regulated by the Food and Drug Administration as a medical device, so agencies wishing to purchase AEDs must have a physician's prescription. It is a good idea to have a physician review the agency's AED program.

Agencies installing AEDs in their facilities should also notify their local 911 emergency provider. This is so the location of the AED can be entered in the enhanced 911 computer system.

AEDs do cost over \$1000 apiece, but they are a good investment if they save just one life.

For more information contact Tom Bell at 303-866-4293 or tom.bell@state.co.us.

TCAC TO FILL ONE EMPLOYEE VACANCY

The State Personnel Director is currently accepting applications to fill one vacancy on the Total Compensation Advisory Council (TCAC) for a three-year term beginning July 1, 2003. Application forms and details about the appointment process are available at www.state.co.us/dhr/comp/tcac.

As a result of the implementation of House Bill 03 -1316, the method for assembling the Council was changed from an election process to an appointment process. TCAC was created pursuant to CRS 24-50-104(3) to advise the State Personnel Director on matters related to total compensation.

TCAC's role is to:

- Provide a broad perspective for shaping the state's total compensation system;
- Assist in solving short-term issues and developing long-term plans;
- Serve as a communication link with constituents; and,

- Advise regarding how special surveys should be conducted.

The group's involvement with major issues includes cases where they:

- Review and advise on total compensation survey procedures;
- Review and advise on the design of the benefit package/components;
- Advise on designing funding strategies;
- Advise on developing legislative proposals, and
- Advise on the design and implementation of performance-based pay system.

TCAC meets the fourth Friday of every month from 1:30 p.m. - 3:00 p.m. in Denver.

For more information about TCAC or the new selection process, contact Judi Karg at 303-866-2393 or judi.karg@state.co.us.

PET LOSS & GRIEVING

By LEIGH BURNS, LPC, CACII
CSEAP COUNSELOR

Pets are often perceived as beloved family members; a companion who has been with you through "thick and thin," through "good and bad," who loves you unconditionally and never judges. In fact, they are often as important to us as children, spouses, or best friends. Therefore, the loss of a pet can be extremely difficult for many of us. If you have experienced the loss of a dear pet, this article may be of help. The following information was taken from the book, "Coping with Sorrow on the Loss of Your Pet," by Moira Anderson.

Am I Crazy to Hurt So Much?

Intense grief over the loss of a pet is a normal, natural and healthy response to loss. Don't believe others if they tell you it's silly, crazy, or overly sentimental to grieve the death of a pet. Your feelings of loss and sadness are valid and very real. Your relationship with your pet was a source of love and comfort. Don't be surprised if you feel devastated by the loss of such a relationship.

What Can I Expect to Feel?

We all grieve differently. You can expect to experience a wide range of normal emotions, including, but not limited to:

- Shock/Denial - A feeling of numbness or of the death being "unreal," i.e., "I can't believe he is really gone...it just doesn't seem real." It can be difficult to accept that your pet will not greet you at the door, or that she doesn't need her daily walk or evening meal.
- Guilt - You may hold yourself responsible for your pet's death. If you had to make the decision to euthanize your pet, you may question if you made the "right" decision or feel badly for having had the pet euthanized. There can also be feelings of guilt if you get another pet.
- Anger - One may feel anger at the driver if the pet was killed by a car, or anger at a veterinarian for not

saving the pet's life, or anger at the cancer or illness that took your pet's life.

- Depression - A natural stage of the grieving process. You will feel sad over the loss of your pet. There is a need to be concerned if we get "stuck" in our sadness and it turns into a serious clinical depression.

What Can I Do About My Feelings?

The most important thing you can do is to acknowledge and "feel" your feelings. Don't deny your pain or loss. What you are experiencing is real and unique to you and the relationship you had with your pet. You have had a very real loss of a loved one. Accept that. Don't lock away or stuff your grief. Memorializing the pet by honoring it in some way can be helpful. Talk with friends or family about your pet, reminisce, journal, paint a picture of your pet, write a poem, cry, or put together pictures or a scrapbook. Do what helps you the most.

Should I Get a New Pet Right Away?

This is a very individual decision. Usually, it is best to make sure you take time to work through the grieving process before getting a new pet. Try not to "replace" the pet you just lost, or resent the new pet for not being just like the old pet. Don't get another pet as a way to avoid the feelings of pain and sadness you may be having. Children in a family may feel that they are being "disloyal" to the old pet if they get a new pet right away. Be careful in getting a "look alike" pet, which will make it more tempting to compare it to the old pet's personality and behaviors.

If you feel that you need to talk to someone about the loss of your pet, call C-SEAP at 1 800-821-8154 to set up an appointment. Remember, this is a very real loss and the grieving you go through is a natural process.

457 COMMITTEE TO FILL ONE SEAT

The 457 Deferred Compensation Committee (the plan's governing body) will be conducting an election this month to fill a seat on the committee. The election period will last from June 2, 2003 to June 23, 2003.

All 457 participants are eligible to vote. Voting can be done either on-line at www.colorado457.com, or with a paper ballot, which will be sent via mail to all participants. Please do not vote using both methods, as this will result in two ballots from the same person.

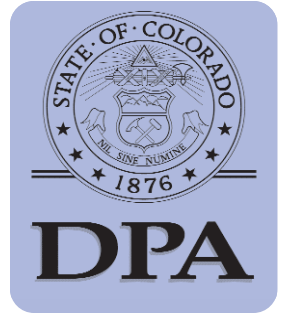
The on-line ballot will go "live" on June 2, while the

paper ballots will be mailed out the same day. To be counted, the Deferred Compensation staff must receive ballots by June 23, 2003. On-line ballots may be submitted on-line; they do not have to be printed out and mailed.

We ask that personnel, benefits and payroll administrators encourage their fellow employees who participate in the 457 Plan to vote, especially via the on-line ballot. We hope to have a large voter turnout. Thank you for your cooperation.

Making the most of your limited training dollars

Professional Development Center



"Especially in stressful times, when budgets are tight, providing your staff with training and support will help them make the best decisions for your organization." - Richard Pennington, State Purchasing Director

Do DIFFICULT TIMES MEAN DIFFICULT CHOICES? NOT ALWAYS...

A 5-day leadership training workshop for government from a national consulting company costs **\$1495** (not including travel)

versus

Our 5-day Leadership and Supervisory Programs specifically created for the State of Colorado workforce which only costs **\$725**

MAKE THE RIGHT CHOICE

www.state.co.us/dhr

(under training)

(303) 866-2439

Access 75 years of combined State employment experience. Choose from a variety of core courses uniquely suited for the State of Colorado workforce or drive organizational change with a flexible, interactive workshop tailored to meet your distinct business needs.

THE DEPARTMENT OF PERSONNEL & ADMINISTRATION AND THE JUDICIAL BRANCH

invite you to attend our continuing brown
bag luncheon series for state mediators

When: 11:30 AM - 1:30 PM
Tuesday, July 8
Tuesday, September 9
Tuesday, November 11
Where: 1313 Sherman St, Rm 318

PROPOSED TOPICS INCLUDE:

GENDER & CULTURE

NON-CONFRONTATIONAL
COMMUNICATION

GROUP MEDIATION

(Further details about each luncheon will be
announced as each date approaches.)

For more information about the luncheon series, the
location of future luncheons, the state mediation
program or additional training for state mediators,
contact Cristina Valencia at 303-866-5383 or
cristina.valencia@state.co.us. Please RSVP to
Cristina and remember to bring your lunch.

Brown Me
Alone
Man right
NO

Peace is not the absence of
conflict; It's that state
when we can deal with
conflict effectively,
efficiently and
respectfully.

-Randolf Lowry

Wrong Yes
Woman
Group white
YOU

A New Day...

The sun has set on the status quo.

Fiscal constraints, increased risks, impending retirements, streamlining, technology, outsourcing, and civil service reform are changing the way the state does business.

Right now, it is even more imperative that all appointing authorities, supervisors, human resource professionals, and risk, fleet and facilities managers work together to find innovative solutions to the challenges facing us.



THE ANNUAL STATE RISK MANAGEMENT & PERSONNEL CONFERENCE

SPONSORED BY THE DPA DIVISION OF HUMAN RESOURCES

- Attend one-day of the most cost-effective and valuable training available to state professionals
- Learn more about the critical nexus of effective risk management and sound human resources management decisions
- Discover innovative ways to manage your business, motivate your employees and ensure the safety of your operations
- Mark your calendars today!!!

FRIDAY, OCTOBER 17, 2003

**THE ARVADA CENTER FOR
THE ARTS & HUMANITIES**

**ONLY \$35
(INCLUDES LUNCH)**

2003 FALL CONFERENCE